

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

RYAN P. DENNEY
c/o PROJECT DEVELOPMENTS,

Plaintiff,

v.

CIVIL ACTION NO. 3:22-00273

WRZZ c/o IHEART RADIO,

Defendant.

ORDER

The Court referred this matter to United States Magistrate Judge Cheryl A. Eifert for Proposed Findings of Fact and Recommendations pursuant to 28 U.S.C. § 636(b)(1)(B). On July 5, 2022, Magistrate Judge Eifert submitted her report, and Plaintiff Ryan P. Denney filed his objections on July 19, 2022. Upon *de novo* review of Plaintiff's objections, the Court **ACCEPTS** and **INCORPORATES** herein the Findings and Recommendations of the Magistrate Judge and **DISMISSES** Plaintiff's Complaint.

Plaintiff filed this *pro se* action on June 28, 2022. From the Complaint and the police report he attached as an exhibit, Plaintiff claims that two unknown men, who claimed to work for Defendant WRZZ, stole certain radio equipment from his residence in Kenova, West Virginia.¹ Upon review, however, the Magistrate Judge recommends that Plaintiff's Complaint against WRZZ be dismissed for lack of subject matter jurisdiction and Plaintiff's Application to Proceed without Payment of Fees and Costs be denied as moot. Specifically, the Magistrate Judge found that Plaintiff did not raise a federal question, nor did he allege diversity of citizenship. *See* 28 U.S.C. § 1331, 1332.

¹As more fully explained in the Proposed Findings and Recommendations, Plaintiff claims his mother allowed the men to take the equipment while he was at work after they told her it belonged to the station and FedEx had mistakenly delivered it to Plaintiff.

In his Complaint, Plaintiff states he is a resident of Kenova, West Virginia, who is currently incarcerated at the Western Regional Jail and Correctional Facility in Barboursville, West Virginia. He also asserts that WRZZ is located in Parkersburg, West Virginia. In his objections, Plaintiff argues that this Court has subject matter jurisdiction because WRZZ is regulated by the Federal Communications Commission (FCC), the station broadcasts over a tri-state area, and the equipment traveled in interstate commerce. However, even if all these allegations are true, they are irrelevant to whether this Court has subject matter jurisdiction. Plaintiff's claim in his Complaint is that his equipment was stolen by two men who purportedly worked for WRZZ. Theft of his equipment does not raise a federal question regardless of the fact the FCC is a regulatory authority. Additionally, the fact WRZZ may broadcast beyond West Virginia's borders and the stolen equipment may have been shipped across state lines does not create diversity between Plaintiff and WRZZ. Therefore, the Court finds Plaintiff's objections are completely without merit.

Accordingly, the Court **ACCEPTS** and **INCORPORATES** herein the Findings and Recommendations filed on July 5, 2022, **DISMISSES** Plaintiff's Complaint, and **DENIES AS MOOT** Plaintiff's Application to Proceed without Prepayment of Fees and Costs.

The Court **DIRECTS** the Clerk to send a copy of this Order to Magistrate Judge Eifert, all counsel of record, and any unrepresented parties.

ENTER: August 12, 2022



ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE